

MEMORANDUM

TO: Superintendents and Business Managers of Public School Corporations

FROM: Kevin C. McDowell, General Counsel

RE: Academic Honors Diploma Award

DATE: June 13, 2005

The Indiana Department of Education has received several inquiries from public school corporations and school board members as to the present effect of a legislative amendment that is not effective until January 1, 2006.¹

Background

In 1997, the Indiana General Assembly created an “honors diploma award,” whereby distributions were made to public school corporations based on the number of “eligible pupils who successfully completed an academic honors diploma program in the school year ending in the previous calendar year” multiplied against a fixed dollar amount. P.L. 260-1997, Sec. 86, adding I.C. § 21-3-1.7-9.8 to the Indiana Code. Initially, this distribution was only to the public school corporation.

In 1998, the legislature amended I.C. § 21-3-1.7-9.8 to add the following language:

Each year the governing body of a school corporation may use the money that the school corporation receives for an honors diploma award under this section to give eight hundred dollars (\$800) to each eligible pupil in the school corporation who successfully completes an academic honors diploma program in the school year ending in the previous calendar year.

P.L. 34-1998, Sec. 3. The General Assembly specifically made this amendment retroactive to January 1, 1998.

¹It should be noted that this is the legal opinion of the Indiana Department of Education. The administrative entity for addressing the present legal effect of an amended statute is likely the Indiana Attorney General. See I.C. § 4-6-2-5.

Since 1998, all amendments to this statute have been either to adjust the amount of the distribution to be used in the calculation or to correct a ministerial error.

During the 2005 legislative session, the General Assembly removed the language granting the school board the discretion to give the distribution to the students who actually generated the funds by successfully completing the academic honors diploma program in the school year ending in the previous calendar year. The General Assembly further dictated how such funds are to be employed by school corporations receiving such distributions in the future. A somewhat cryptic subsection was also added, advising that “[a] governing body that does not comply with this section for a school year is not eligible to receive an award under this section for the following school year.” HEA 1001-2005, Sec. 201 (P.L. 246-2005). The amendment is not effective until January 1, 2006.

At last count, forty-four (44) Indiana school corporations elect to provide the academic honors diploma funds directly to the eligible students.

Issues

Although the amended statute is not effective until January 1, 2006, are public school corporations presently prevented from awarding the academic honors diploma funds generated to the eligible students graduating in 2005?

Will the fact that such funds generated presently are not actually distributed to the public school corporations until after the effective date of the amended statute affect the application of the amended statute?

Discussion

Absent a contrary legislative intent, statutes are generally given prospective effect. *Tarver v. Dix*, 421 N.E.2d 693, 696 (Ind. App. 1981). A “contrary intent” is generally “manifested in clear and unambiguous terms.” *Guthrie v. Wilson*, 162 N.E.2d 79, 81 (Ind. 1959). “[C]ourts do not look with favor upon the retroactive application of statutes which would impair vested rights...” *Id.* This applies as well to legislative amendments. “Indiana has long adhered to the principle that an amendatory act is to be generally construed to be prospective in application. [Citations omitted.] The prospective operation is particularly favored if vested rights or obligations are affected by the amendatory legislation.” *State of Indiana v. Morand*, 349 N.E.2d 718, 722 (Ind. App. 1978).

In this case, the legislature did not directly create in eligible students a vested right in the academic honors diploma funds, but it did provide the governing body of a public school corporation with the discretion to award such monies to eligible students. These “awards” are not contractual in nature, and it is questionable whether such awards are considered “vested rights” such that the legislature could not amend the law and affect any present distribution. However, the legislature chose not to make the 2005 amendments retroactive. The effective date of the amendatory act is January 1, 2006. By all judicial constructions of statutes, new or amendatory, the statutory application is prospective. There is no expressed legislative intent to

have the amendatory act applied retroactively such that a school corporation could not make such an award to an eligible student.

Conclusion

It is my opinion that a school board continues to have the discretion to award the academic honors diploma funds to eligible students. The 2005 amendments are not retroactive but prospective. The effective date is not until January 1, 2006. I can find no legal impediment to school board's making such a distribution prior to the effective date of the amendment, especially as the legislature could have made its amendments retroactive to January 1, 2005—as it did in 1998—but chose not to do so.

I consulted with the State Board of Accounts in this regard. The State Board of Accounts indicated that it would not take audit exception to school corporations following the advice contained herein, provided that any such payments to eligible students be made prior to January 1, 2006.

I am hopeful this addresses the concerns expressed.

cc. Patty S. Bond, Director, Division of School Finance